IN THE

Supreme Court of the United States.

OCTOBER TERM, 1898.

THE STEAMSHIP *Adula*, HER ENGINES, BOILERS, TACKLE, APPAREL, ETC.; THE ATLAS STEAMSHIP COMPANY (limited), Claimant, *Appellant*,

v.

THE UNITED STATES.

No. 167.

BRIEF ON BEHALF OF APPELLEE.

This is a libel in prize against the British steamship *Adula* (Rec. p. 1), filed in the Southern District of Georgia on July 21, 1898. Depositions *in preparatorio* (pp. 88–143) were taken July 21 and 22, and her owner, the Atlas Steamship Company (pp. 6, 8), appeared as claimant. A decree in condemnation (p. 24) was entered July 28, 1898. A motion was made (p. 24) on August 3 for "further relief," which was actually for an order for further proof, and this was argued on affidavits presented by the claimant (pp. 25–40) and depositions *de bene esse* for the libellant (pp. 48, 143–186). This was denied (p. 49), and the vessel was released on stipulation of value (p. 247). The decree gives the ground of condemnation as "an attempt to run the blockade as charged in the libel, as well as enemy property."

In an elaborate opinion (p. 57; 89 Fed. Rep., 351) the facts in the case and the conclusions of the court are stated. The opinion is so full and clear that the labors of counsel on appeal are greatly abbreviated.

Statement of Facts.

The *Adula* was engaged prior to the Spanish-American war in general trade between Kingston and other ports on the coast of Jamaica. It was consequently well fitted for shallow waters. After the war broke out the vessel was chartered by various persons, in the intervals of its regular work, for voyages to Cuba. Twice it went to Cienfuegos with permission from the United States Government, obtained through Consul Dent at Kingston, and a third time to the same port, after the blockade had been declared, without permission. It took one trip to Santiago before the blockade. On June 28, it was chartered by Don José R. Solis, a loyal Spanish subject, to carry refugees from the three cities of Manzanillo, Santiago, and Guantanamo. Señor Solis was enrolled as supercargo. The two latter ports had been blockaded since the early part of June by American war vessels, and by the President's proclamation of June 27 the first-named port was included in the blockaded territory. The *Adula* left Kingston late in the afternoon of June 28. The United States consul had warned the local agent of the owner that the vessel would not be allowed to enter Guantanamo or Santiago and had refused the charterer a permit or safe conduct. The vessel sailed in spite of this, going first toward Santiago and then to Guantanamo, was met before reaching the harbor by the U. S. S. *Vixen*, ordered to proceed, entered the harbor of Guantanamo and was seized by the *Marblehead*, which with other vessels of the fleet was lying inside the bay.

The claimant asserts that the purpose of the vessel was to inquire of the blockading squadron at each port whether permission would be granted to enter to take off refugees. The instructions of the owner to the master (p. 12) are consistent with this purpose.

Upon these conditions of fact it is insisted that con-

demnation should follow. Without now adverting to other reasons which will be hereafter discussed, it is maintained that the following facts require condemnation:

(1) A blockade of Guantanamo existed when the vessel was captured.

(2) The vessel was notified of the blockade prior to sailing from Kingston.

(3) Its approach to the harbor without first having obtained permission, even to ask permission to enter, was in itself a violation of the blockade.

I. The Blockade Existed.

The evidence on this subject is contained in the depositions *in preparatorio*, in the deposition of Lieutenant Anderson, taken on the motion for further proof, and in official documents not contained in the record, but of which the court will take notice.

Guantanamo is 18 miles from the mouth of Guantanamo Bay (p. 17). It was a considerable city before the war, but was reduced by the operations of war to three or four thousand inhabitants (p. 173). Access to it is obtained either by a small river emptying into the upper bay of Guantanamo (see official map) or by rail to Caimanera, a town on the west side of the upper bay (p. 173). The occupation of the harbor was both by the naval vessels and by a landing party of marines (p. 108). The marines occupied the crest of a hill on the west side of the harbor near its entrance and the side of the hill facing the harbor. (Morris, War with Spain, p. 221; Goode, With Sampson Through the War, p. 166.) The American vessels took possession of the lower bay on June 7th, obliging a small Spanish gunboat, The *Sandoval*, to take refuge in the upper bay (App. 488, 497; Goode, 165). At various times expeditions were made to different points on the bay, not in possession of the blockaders,

to shell forts or to raise mines (App. 494, 499, 502; Morris, 224). The vessels remained at the entrance of the harbor (Rec. 149) and a cable station was opened there (p. 497). These facts are fully stated because it is of importance to show just what was the nature of the blockade of the port. It is made clear that there was no occupation of the surrounding country and that the landing of the marines was only an accessory to the naval operations, that is, the blockade of the port and the establishment of a coaling station for coaling of naval vessels.

Purser Williamson (p. 88) testifies to the capture by the *Marblehead* in Guantanamo Bay and that at the time the *Solace* and two or three torpedo boats were there; (p. 91) that Commander McCalla told them that the port was blockaded and that the blockade had been declared the day before their arrival. Captain Yeats (p. 94) testifies to the capture by the *Marblehead* and to the presence of several other ships, including the *Solace*. He says (p. 98) that the first time he knew that Guantanamo was blockaded was when Commander McCalla told him that they had no right there; that "it was apparently under an order of blockade." Supercargo Solis (p. 104) testifies to the capture by the *Marblehead* and the presence of several other ships, including the *Solace*. He says (p. 109) that Captain McCalla told them that the blockade had been declared officially on the 27th.

From this testimony alone it is very clear that the *Adula* found an actual blockade of Guantanamo at her arrival, by the *Marblehead* and other vessels.

Lieutenant Anderson testifies (p. 148) that the *Marblehead* took up her position on June 6 or 8 and that an actual blockade was established from that time; that it was established by order of Admiral Sampson and was exceedingly strict and efficient; that there were at no time less than two and frequently several American war

ships in the harbor; that foreign vessels were turned back from the harbor. The witness himself boarded an English vessel, ordered her in, and, after examination, she was then refused permission to proceed up the bay and sent away.

It appears from the official document published by the Navy Department entitled "Appendix to the Report of Chief of the Bureau of Navigation, 1898," that as early as May 29, the question of occupying Guantanamo was considered by the Admiral (p. 478); that the *Marblehead* and the *Yankee* were sent to Guantanamo (p. 488) on June 7, entered the harbor and took possession of the lower bay to hold it for the use of American vessels; on the 10th (p. 489) the *Panther* and *Yosemite* were sent there; on the 12th (p. 491) the torpedo boat *Porter* arrived from Guantanamo bringing the report of a land battle there; on the 13th the collier *Scindia* arrived from there; that further skirmishing continued there on the 13th and 14th (p. 492), and that on the 14th (p. 493) the *Texas* and *Suwanee* were sent to destroy the forts in the upper part of the bay, which was accomplished (p. 494) on the 15th. A cable office was opened at Guantanamo Bay on the 21st (p. 497) and dispatches (p. 499) were received through this office on following dates.

The actual existence of the blockade from the 7th of June is completely established from this evidence.

No other fact is necessary to create a legal blockade. Halleck, Int. Law, ch. 25, § 9, says:

"Blockades are divided by English and American publicists, into two kinds—(1) a simple or *de facto* blockade, and (2) a public or governmental blockade. This is by no means a mere nominal distinction. * * * A simple or *de facto* blockade is constituted merely by the fact of an investment, and without any necessity of a public notification. As it arises solely from facts, it ceases

when they terminate. Its existence must, therefore, in all cases, be established by clear and decisive evidence."

Phillimore, Int. Law, vol. 2, p. 293 (Am. ed.) says:

"The proper notification (of a blockade) may be conveyed either by:

"(1) The simple fact itself, that is, by the presence of the blockading force, accompanied by the declaration of an officer of the fleet, for public notifications between the governments are only meant for the information of individuals, and if the individual be personally informed, that purpose is still better obtained than by a public declaration."

Sir William Scott says (*The Mercurius*, 1 C. Rob. 82):

"The inability of the master to proceed into the Texel, therefore, proves the blockade; for a blockade may exist without a public declaration, although a declaration unsupported by fact will not be sufficient to establish it."

A laborious effort is made in the learned brief for the appellants (pp. 11–17) to show that Guantanamo Bay was not blockaded, but that the territory was in the possession of the United States and no longer enemy territory. The facts established, which are carefully avoided by the brief of the appellants and accurately stated in this brief, show that a blockade in fact existed, although with this was coupled the use of the harbor of Guantanamo. This blockade fully met the fixed definition of a legal blockade. Sir William Scott has several times defined a blockade. In The *Rollo* (6 C. Rob. 372) he says:

"What is a blockade but a uniform exclusion of all vessels not privileged by law?"

In *The Frederick Molke* (1 C. Rob. 87) he says:

"What is the object of a blockade? Not merely to

prevent an importation of supplies, but to prevent export as well as import, and to cut off all communication of commerce with the blockaded port."

In *The Vrouw Judith* (1 C. Rob. 151) he says:

"A blockade is a sort of circumvallation round a place, by which all foreign connection and correspondence is, so far as human force can effect it, to be entirely cut off."

Phillimore (Int. L. vol. 3, p. 383) says:

"The object of a blockade is to prevent exports as well as imports and to cut off all communication of commerce with the blockaded place."

H. B. Deane (Law of Blockade, p. 2) defines a blockade as follows:

"The placing such a force on or near the seaboard of a town or line of coast, as will effectively prevent vessels from passing between the sea and that town or coast."

Wheaton (2d ed. by Lawrence) approves:

"The definition of a lawful maritime blockade, requiring the actual presence of a maritime force, stationed at the entrance of the port, sufficiently near to prevent communication."

In what respect then can it be said that the conditions at this port do not constitute a blockade? While it is true that a blockade is usually accomplished from the outside, yet in this case, as in the blockade of the Mississippi River in the Civil War, the blockading force was able to enter inside the entrance and to enforce the blockade from within and not from without.

It abundantly appears from the evidence cited that in the immediate vicinity of the entrance to this harbor there were few human habitations, and the Spanish forces, as well as the inhabitants, were at a distance of from twelve

to eighteen miles. Communication with them would have been had by passing through the blockade and entering points on the shore of the bay or on the river leading to the city of Guantanamo, beyond the points occupied by the American forces.

The case of *The Circassian* (2 Wall. 135) precludes further discussion on this subject, since the present case does not go so far as the doctrine declared in that. The facts of that case are stated in appellant's brief (p. 14). It was held by this court that a vessel bound for New Orleans was subject to capture, after New Orleans was in possession of the United States authorities, on the ground that the blockade had not ceased with the Federal occupation. The court there said (p. 150):

"Only the city was occupied, not the port, much less the district of country commercially dependent upon it, and blockaded by its blockade. Even the city had been occupied only three days. It was yet hostile; the rebel army was in the neighborhood; the occupation, limited and recent, was subject to all the vicissitudes of war. Such an occupation could not at once, of itself, supersede or suspend the blockade. It might ripen into a possession which would have that effect, and it did; but at the time of the capture it operated only in aid and completion of the naval investment."

In that case the vessel was bound for New Orleans, the very city in possession of the United States when the vessel was captured. But here the purpose of the *Adula* was to reach the city of Guantanamo, or the nearest available point to it in the bay, a place in the undisturbed possession of the enemy, to be reached only by passing the blockade established to prevent just such intercourse. Here, too, as will be fully seen, the vessel had notice of the continued existence of the blockade and warning was distinctly given against going.

II. The Claimant Was Notified of the Blockade.

The evidence of notice to the owner of the vessel of the actual existence of a blockade is contained in the admissions of Don Jose R. Solis, the charterer and supercargo of the vessel, of W. Peploe Forwood, agent of the owner in Kingston, and of Captain Yeats.

Señor Solis (p. 106) thus described his interview with Consul Dent at Kingston :

"I explained to Mr. Dent the idea of my voyage. He told me he was sorry he could not give me the passport I wanted, because he was not allowed to give such passports unless he had permission from the American authorities in Washington. As I was going to leave two hours afterwards, he said there was no time to ask permission. I said, 'Look here, Mr. Dent, I don't think there is anything wrong, because my intention is to go to Guantanamo and ask permission of the American admiral to allow me to go. If he does not allow me, I come back.' Then I went to see Mr. Forwood, the agent of the Atlas Steamship Company. I explained what Mr. Dent had told me. He said, 'Look here, Solis, I don't think there will be anything wrong, because, besides what you say, I will give the captain a letter with full instructions about what he will do, and this letter you may show to the United States naval officers, and, of course, they will see you go with the purpose of taking passengers and with no other purpose.' When I chartered her she had a part of her cargo on board, and Mr. Forwood ordered that portion of the cargo taken off. During her last voyage she sailed direct to Guantanamo and to no other place; we went right to Guantanamo; she went by no other port; we went in sight of no other port."

He further testifies (p. 108):

"I knew that there was a condition of war existing between America and Spain on the 21st. They told me on

board the *Adula* that the blockade of Guantanamo was published on the 27th, the day before. I had not heard it before I left Kingston. I did not know officially Guantanamo was blockaded. On board the *Adula* I heard that on the 27th there was issued an order from the President of the United States declaring a blockade of the port of Guantanamo, but I did not know it until we arrived at Guantanamo. At Kingston I heard there were some warships at Guantanamo, and I told Captain Forwood that the first thing I would do would be to go to the admiral and tell him my intentions. I did not think the papers in Kingston published the blockade, I did not see it if they did. The people generally did not talk about it. I read something about 'McCalla's Camp.' I understood Guantanamo was not blockaded by the United States. I heard that marines had been landed at the entrance to Guantanamo, Caymenera—the bay is called Caymenera—and that the marines had possession of the port, and that the ships were inside. I can not tell when I received the information that marines had been landed there and taken possession of the port of Guantanamo or Caymenera. Perhaps it was one or two days before. I don't know what the others knew about a state of war existing. I understood Guantanamo was not declared officially blockaded, although there were some vessels there. I got that information from newspapers in Kingston, and from those newspapers I got the information that marines had been landed at the entrance to the bay on the east side; they call it 'East Point.' I don't know when I got the information, but think it was the day before the vessel left Kingston. I was at Kingston when I obtained that information; it was Monday, and I left on Tuesday."

Just what he means by his understanding that Guantanamo was not blockaded while admitting his knowledge that ships were inside and that marines had been landed, is not easily understood. It is incredible that he supposed that free intercourse was to be permitted, through the fleet, to the port above.

He gives further (p. 109) interesting details of the conversation between him and Consul Dent, as follows:

"At Kingston the American consul told me, when I asked permission to go to Guantanamo, Santiago, and Manzanillo, that he could not give me such permission; that only the authorities in Washington could give such permission. As I was going to leave that same day, and he said, 'I don't think they will give you permission.' I said, 'Look here, Mr. Dent, as long as I don't go into anything bad; I have seen some telegrams from people there asking for vessels to bring their families, and I think I could go and get the parties; I don't intend to run the blockade or anything of that kind; I don't intend to get a cargo; if you don't give me permission, I think the admiral, after I get to his presence, he will not refuse me to go in, and if he refuses I will come back; I won't attempt to do anything against the American authorities.' I was not aware of the blockade of Santiago. I knew there were vessels there. I knew Manzanillo was not blockaded; I am not sure of Santiago, but I am sure about Guantanamo and Manzanillo, and even being blockaded I thought that he or the admiral would give me permission to go there and get refugees, because I did not see there was anything wrong to the United States in bringing refugees that wanted to get away from the path of the war. On the contrary, I thought it was a good thing to take people from the centre of the war. Even as I was doing it upon business principles at the same time there was a kind of humanity in it. I don't mean to say I did it only from humanity; it was business. I also wanted to bring my family from Manzanillo. Captain McCalla thought I was a spy. Nobody can prove anything on me."

A further statement on the same subject brings out more clearly still the position of Consul Dent (p. 114):

"Mr. Dent told me not to go. I don't remember his giving any particular reason for not going. I told him those voyages had been made at other times, and that it not being my intention to take a cargo, but my only idea

was to bring refugees. I showed him the paper published the day before, in which they stated the Spanish consul would not give permission, and that it was not nice, etc. Mr. Dent did not give me any reason why I could not go there. He told me not to go, and I answered to him that I was not going for anything wrong. He said to me he could not give me permission. Then I said to him, I decided to go, and I don't think there will be any harm for me, since I didn't go for any bad thing, but only to bring refugees. I did not think I did any harm to the United States in that. I don't remember Mr. Dent telling me the vessel would be liable to capture. He said I ought not to go, and that he could not give me such permission.

* * * * * *

"Under ordinary circumstances it would not be necessary for me to get permission from Mr. Dent, because Captain Forwood told me he never thought it necessary to get permission of the consul, since it was not a business matter, such as bringing a cargo or wrong things. I went to the consul, introduced by a Cuban gentleman called Miranda, that I think is employed there or receives favors from the consul. That gentleman made an appointment with me for 2 o'clock in the consul's office. When I went to the consul's office I was nearly satisfied of obtaining that permission, because I thought this gentleman, Mr. Dent, had given permission at different times of the same kind. If I had known he was not going to give me such permission I should not have lost my time in going, and since Captain Forwood, of the Atlas line, told me he didn't consider there was any danger in going for refugees."

The clear meaning from all this is that the charterer knew of the blockade, that the local representative of the United States told him not to go, but that he had already made up his mind to take his chances in any event.

The only depositions taken were of persons on the *Adula* and the *Marblehead*, but one statement by Señor Solis is an interesting proof of the effect upon Consul Dent's mind of the interview with him (p. 112):

"I was told that the captain of the *Marblehead* already knew we were going into Guantanamo, because Consul Dent had sent telegrams from Kingston."

Not only was notice thus given to the charterer and supercargo that the vessel was not to go, but Consul Dent took pains to call on Agent Forwood and advise him against the vessel's attempting the trip. Mr. Forwood's whole statement on this subject adduced *ex parte* as a reason for opening the decree and allowing further proof is as follows (p. 34):

"As I was leaving my office at 20 minutes to 5, and a few minutes (say ten) before the ship sailed (she ought, however, to have sailed at 4 o'clock) Mr. Dent came into my office, and I must now give you in detail what occurred and the conversation that took place. You must excuse my giving you this detailed statement and the unofficial language which it will contain, but I give it to you as it occurred, without reference to officialism. I said, 'Hello, Dent; what can I do for you?' Then he casually remarked, 'Oh, nothing'; then I said, 'I was just going home; come in and have a whiskey and soda.' He came into my private room, and we sat on the table together. As we were having our drink he asked me if the *Adula* had sailed, and I said, 'No; she was going in five minutes or was just going off.' He replied, 'Well, Forwood, I would not advise you to let the ship go; they won't let her into Guantanamo, and they will be watching for her.' I said to him, 'Oh, Dent, let me show you the captain's instructions. He has got orders to go to the fleet there and ask their permission to take some refugees.' 'Well,' he said, 'I don't know, but they will be watching for her, and I think that Señor Solis is a Spanish agent carrying $300,000 in gold to buy over the rebels in the American camp.' I told him that I had enquired about the man, and that it was one of the usual Kingston yarns. He simply shrugged his shoulders, talked about some other matters for a minute or two, we finished our drink, and he left the office."

The log of the *Adula* (p. 198) shows the hour of sailing to have been 6 P. M.

The informality of this notice in no degree detracts from its effect. Consul Dent, after his conversation with Señor Solis, doubtless felt any further warnings supererogatory. It may well be supposed that Señor Solis conveyed his view, already quoted (p. 114), that he should not have lost his time in going had he known that permission would be refused, as well as the statement of Captain Forwood that "he didn't consider there was any danger in going for refugees." Under these conditions Consul Dent had done all that could be demanded of him. But his friendliness toward Agent Forwood caused him to add, in a manner that could not be considered offensive, but was none the less official, warning detailed in Mr. Forwood's testimony.

Captain Yeats' testimony presents the same difficulty as that of Señor Solis. He knew all about the actual existence of the blockade at Guantanamo by American war vessels being in possession of the entrance to the harbor. He could not suppose that trade was then free to the port through the hostile vessels. In spite of all this he denies knowledge that there was a blockade "in the strict sense of the word,"—a marked evasion. His testimony on this subject is as follows (p. 98):

"As to a blockade, in the strict sense of the word; as to a blockade of Guantanamo Bay, I didn't know anything at all about it. I had seen in the papers about Cienfuegos being blockaded, I never knew anything at all about it. I knew some weeks before that Cienfuegos was blockaded, and I knew that by having gone there on previous occasions. I didn't know whether the owner knew that Santiago and Guantanamo Bay were blockaded or not; he simply told me that I should meet warships off there. The first time I knew that Guantanamo was blockaded

was when Commander McCalla told me that we had no right there."

It is, however, unnecessary to take time in discussing whether Agent Forwood and Captain Yeats knew about the blockade because the letter of instructions from Forwood to Yeats (p. 12), annexed as "Exhibit B" to the petition of the claimant, distinctly announces that American warships will no doubt be found off the port of Guantanamo.

One of the sailors on the *Adula*, Horatio Morris, testifies to the common report prior to sailing about the blockade of Guantanamo (p. 118):

"About three days before I left Kingston I heard that Guantanamo was blockaded; I heard it from the people around the streets; I didn't see it; I heard it was in the papers; I never heard any of the officers of the *Adula* or people on board talking about Guantanamo being blockaded, and I don't know exactly whether the owner or master or officers of the ship *Adula* knew that Guantanamo was blockaded. I knew about it, but I don't know anything about them. I don't know how I found it out, but I heard it on the streets of Kingston."

He says further on this subject (p. 121):

"At the time the *Adula* was captured she was sailing for the blockaded port of Guantanamo; she was not at that time going to Santiago. I heard about these ports of Santiago, Cienfuegos and Guantanamo being blockaded a long time before we went there. Each trip we made to the ports in Cuba, I heard about their being blockaded before we left Kingston."

He testifies very positively to an admission by Captain Yeats of knowledge of the blockade of Guantanamo, in spite of his later efforts to obscure this fact, giving the

following conversation between an officer of the *Vixen* and the Captain of the *Adula* (p. 119):

"The crew of the *Adula* made out, about a mile and a-half before we reached Guantanamo, a small cruiser, and the *Adula* stopped, and the cruiser ran up across the bow, and the captain of the cruiser asked us, 'Didn't you sight the warships down to Santiago?' and the captain said, 'Yes,' and the captain stopped, and he said, 'Didn't you hear that Guantanamo was blockaded?' and our captain said 'Yes'; then he said, 'You can proceed on.' I heard about the blockade in Kingston, but after leaving Kingston, until we met this cruiser, I never heard about it any more. I know nothing about any writings or indorsements on the ship's register."

Lieutenant Anderson very positively testifies to admissions by Señor Solis and Captain Yeats. His testimony, beginning with the question by counsel for the claimant, is as follows (p. 152):

"Now, come right down to that point; what was it he said to you about the conversation between Solis and Dent?

"A. Mr. Solis told me that as the *Adula* had previously made two trips into Cienfuegos through the blockade without permission of the consul at Kingston or without authority that he might do the same, or words to that effect.

"Q. What was it he said to you—that Mr. Dent told him—about going to Santiago, Guantanamo, and Manzanillo?

"A. He told me that the American consul at Kingston had refused him permission to enter those ports. That is all he told me about that.

"Q. At what time did he say the American consul had refused him that permission?

"A. Just before sailing, I understood him to say."

He says further (p. 154):

"Q. Did Captain Yeats make any statement to you in reference to any notice from the consul at Kingston, Jamaica—the American consul—prohibiting the ship from going to Santiago, Guantanamo, and Manzanillo?

"A. Yes; he told me in a conversation with him that the American consul had refused permission for the vessel to enter those ports on the voyage she was making."

In view of all these facts we do not think that it is possible for any serious contention to be made that either the owner's agent, the charterer and supercargo, or the vessel's captain were ignorant before leaving Kingston of the existence of the blockade.

Halleck, Int. Law, ch. 25, § 22, states the law recognized by all the authorities:

"Proof of the actual knowledge of the party at the inception of the voyage supersedes, in all cases, the necessity of a warning, nor is it of any importance by what means or in what form, he received the information, if the information was credible in its nature, and came in such a form and from such a source as to leave no reasonable doubt on his mind as to its authenticity."

III. The Approach to the Harbor was a Violation of the Blockade.

On this state of facts no discretion is left in the court as to the adjudication of the vessel as prize. The authorities sustaining this position beyond question are cited in the opinion below (p. 65).

In the case of *The Cheshire* (3 Wall., 231) the captain had instructions substantially like those given in this case "to call off Savannah merely for the purpose of inquiry, but on no account whatever to attempt to enter a blockaded port."

The master of the vessel testified (p. 232):

"I was to speak the blockading squadron, and if the

ports were blockaded, I was to go to Nassau or Halifax."

The court disposed of the contention that under these circumstances the vessel was not guilty of a breach of blockade in the following terms (p. 235):

"Aside from these considerations the intention to break the blockade is to be presumed from the position of the ship when captured. As already stated, she knew of the blockade when she sailed from Liverpool; she had no just reason to suppose it had been discontinued; her approach, under these circumstances, to the mouth of the blockaded port for inquiry was itself a breach of the blockade, and subjected both vessel and cargo to seizure and condemnation. The rule on this point is well settled, and is founded in obvious reasons of policy. If approach for inquiry were permissible it will be readily seen that the greatest facilities would be afforded to elude the blockade; the liberty of inquiry would be a license to attempt to enter the blockaded port; and that information was sought would be the plea in every case of seizure. With a liberty of this kind the difficulty of enforcing an efficient blockade would be greatly augmented. If information be honestly desired, it must be sought from other quarters. In the case of the *James Cooke*, Edwards, 263, the ship was captured at the entrance of the Texel, and the court applied this rule, observing that the approach of the ship to the mouth of a blockaded port, even to make inquiry, was, *in itself*, a consummation of the offence, and amounted to an actual breach of the blockade."

In the case of *The Delta* (7 Fed. Cases, 444) cited in the opinion below (p. 65), the law on this subject is very clearly laid down in the opinion by District Judge Betts, as approved later by this court in the case just quoted and a very forcible exposition of the law by Sir William Scott was there cited (p. 448):

"It is well established by repeated decisions of Sir William Scott, the great master of British prize law, that

a neutral trader can not, with knowledge of a blockade, lawfully go to the station of a blockading force under the pretence of obtaining information as to its continuance. The inquiry must be made elsewhere, not there. 'The merchant,' says the learned judge, 'is not to send his vessel to the mouth of the river, and say, 'if you don't meet a blockading force, enter; if you do, ask a warning and proceed elsewhere.' Who does not at once perceive the frauds to which such a rule would be introductory? The true rule is, that after knowledge of the existing blockade, you are not to go to the very station of the blockade upon pretence of inquiry.' The *Spes* and The *Irene*, 5 C. Rob. Adm. 76; The *Betsey*, 1 C. Rob. Adm. 334; The *Neptunus*, 2 C. Rob. Adm. 110; The *Little William*, 1 Act. 141, 161. The reason and necessity of the rule, as laid down by Sir William Scott, is too obvious to require argument in its support. Were it once relaxed, so as to allow the approach of neutral traders to the mouth of a blockaded port for the purpose of inquiry, the blockade of the ports of the insurgent States could not be made effective by the combined naval forces of all nations. Such a relaxation would operate as a universal license to the merchant vessels of the world to attempt to enter a blockaded port, for a failure to do so would be attended with no hazard. The soundness of this principle has not been called in question by any decision of the courts of this country, and its wisdom will probably be approved so long as a belligerent blockade is recognized in international law as a legitimate and efficient method of prosecuting a public war."

Halleck, Int. Law, ch. 25, § 26, cites with approval a passage from Duer on Insurance, directly applicable to this case:

"'It seems a just inference from the decisions,' says Duer (On Insurance, Vol. 1, pp. 699, 670) 'that where the blockade has been constituted simply by the fact of an investment, although its existence was known at the port of departure, previous to the sailing of the neutral ship, she may clear out, provisionally, for the blockaded

port; but that, in this, as in former cases, the enquiry upon the result of which the right to complete the voyage must depend must be made at a port of the blockading States, or of a neutral power. I see no reason to doubt that the prohibition to proceed to the mouth of the blockaded port embraces all cases of a previous knowledge, from whatever source the knowledge may have been derived, and that in all its violation is subject to the same penalty.'"

In view of the loyal Spanish citizenship of the supercargo and of the *Adula's* past history in breaking the known and declared blockade at Cienfuegos on her third trip, and the leniency with which she was treated at that time (p. 102), can it be doubted that, had no war vessels been found off Guantanamo at the particular moment when she arrived there, the vessel would have entered the bay and sailed up to the city of Guantanamo, taking her chances on escaping in equal security. This very case presents a striking instance of "the reason and necessity of the rule as laid down by Sir William Scott." The learned judge below says (p. 65):

"Nor does the excuse that it was the purpose of Don José R. Solis to approach the American fleet and ask permission of the admiral to take off refugees avail the ship. Indeed, it may well be doubted from the evidence if he had any such purpose. It is plain that when he saw the fleet off Santiago he did not approach it, but steamed away to Guantanamo, where at that time no blockading vessels were visible."

Captain Yeats attempts to make some excuse that his directing his course originally towards Santiago was on account of his knowing the coast in that vicinity and not knowing it near Guantanamo (pp. 96, 100, 101). We can not think that this explanation of his reasons for being out of his direct course to Guantanamo is sufficiently

explained by his own testimony in view of the want of frankness which he has shown in relation to the blockade.

Purser Williamson says (p. 92) that her course was altered perceptibly about 2 o'clock of the day she was captured. Seaman Morris testifies (p. 120) that when they were about four or five miles off Santiago harbor they headed straight on up the coast. Acting Chief Officer Clarkson (p. 127) testifies to having steered a direct course to Guantanamo but that they found themselves somewhat to the eastward of Santiago. Probably the acting chief officer was not in the confidence of his captain as to the course steered. Thereupon they steered directly for the land and, seeing American men-of-war off the entrance, put about and went directly to Guantanamo. Quartermaster Hamilton (p. 142) says that they came up past Santiago and saw the ships.

The conclusion of the district judge that the presence of the vessels off Santiago was the cause of the change of course is perfectly warranted. Had no vessels been found there, it is clearly to be concluded that the *Aduda* would have sailed directly into Santiago Bay.

Other Considerations.

We do not think it necessary, in view of the full discussion of the various details of the case in the very elaborate opinion below, to do more than advert to the other suspicious circumstances relating to the voyage. The large number of letters found on board (pp. 81, 220–227), the suppression of the passport from the Spanish Consul to Señor Solis (see opinion, p. 59), the unnecessarily large load of coal on board the vessel (pp. 154, 155), the difference between Captain Yeats (p. 97) and Señor Solis (p. 112) as to the duty of the captain to go to

other ports beside those named in the charter-party, all combine to throw suspicion on the action of the vessel, which is rendered conclusive by the deposition of the parties themselves.

The opinion of the learned judge below cites the doctrine (p. 60) which must control the decision of this case:

"The authorities on this subject are as abundant as conclusive. That great admiralty judge, Sir William Scott, afterwards Lord Stowell, in *Ranger*, 6 Rob. 126, declared: 'If the owner will place his property under the absolute management and control of persons who are capable of lending it in this manner to be made an instrument of fraud in the hands of the enemy, he must sustain the consequences of such misconduct on the part of his agent.'"

It is respectfully insisted that the duty of the court is entirely clear. The vessel, herself of suspicious antecedents, in command of an alien enemy, with full knowledge of the owner's agent and the vessel's captain, warned by the American consul, attempted to commit an act which the law of nations declares to be a breach of blockade. For doing this the law decrees her forfeiture. A large risk was undertaken in the hope that, by good fortune, a great pecuniary reward would be reaped. The indulgence of the United States authorities so constantly shown to the citizens of Great Britain throughout this war was overstrained in this case and the vessel was submitted to the determination of a prize court. Due regard for the law as settled in the past relieves this court of difficulty in its conclusion.

Reply to Appellant's "Points."

Since the preparation of the foregoing argument the brief of counsel for the appellant has been received and

some notice is necessary of the positions there taken. These will be referred to severally.

1. (Appellant's brief, p. 11.) It is maintained that there was no blockade at Guantanamo Bay, since the port was in possession of the United States. We have already pointed out (*ante*, p. 3) that the occupation was merely of the lower entrance to the bay, effecting a blockade of the neighboring towns and country remaining in the hands of the enemy, and that the purpose of the *Adula* was to pass through the blockade and enter into relation with the enemy above.

The objection that no official blockade was declared of this port is anticipated in our exposition of authorities showing that a blockade may be created by the actual fact, the difference between such a blockade and one publicly proclaimed being that in the former case there must be notice to the vessel to render it liable to capture for violation.

This blockade was created on the 7th of June by the actual presence of the vessels of the United States and it was in existence at the time of the President's proclamation declaring the blockade of the coast of southern Cuba west of Cape Cruz. It was unnecessary for him to declare a blockade of southern Cuba east of Cape Cruz, because the only two ports on that coast, Santiago and Guantanamo were already actually blockaded.

2. (Appellant's brief, p. 17.) The second position, if we understand the appellant's brief correctly, is that the Island of Cuba, under the joint resolution of April 20, 1898, (30 Stat. L. 738) was not enemy territory, and that intercourse with the inhabitants was consequently a friendly and not a hostile act. International law recognizes no blockade of a friendly or neutral territory. If the appellant's position be correct, then the entire blockade of Cuba, under the two proclamations of blockade by

the President, of April 22 and June 27, 1898 (30 Stat. L. 1769, 1776) was void, since it was not enemy territory. It need not be argued that this court will not declare the executive in error in a matter which so peculiarly falls within the political jurisdiction of the Government. The cases cited in support of this position (pp. 19, 20, of appellant's brief) all show that Courts of Admiralty will consider the actual condition recognized by the executive, as determining the status of foreign territory. This portion of Cuba actually in possession of our enemies was necessarily treated as enemy territory, and the President had the right to declare a blockade and prohibit intercourse with it.

3. (Appellant's brief, p. 21.) Stress is laid upon the fact that this vessel was on an errand of necessity and humanity and consequently must be protected. But it is frankly owned (Rec. p. 110) that it was purely a business speculation. It must be governed as other like enterprises. The application for exemption from the ordinary rules of blockade on account of the character of the voyage should have been allowed by the executive, if exemption is to be recognized in this court. We have seen that such an application was made and was denied.

4. (Appellant's brief, p. 23.) An implied license to go into Guantanamo is alleged because the vessel was once allowed to go into Cienfuegos after it had been blockaded. There can be no implication of license in the face of its actual refusal.

5. (Appellant's brief, p. 24.) It is maintained that the cases cited against the appellant are of no effect because they were decided prior to the adherence by the President's proclamation of April 26, 1898, (30 Stat. L. 1770) to the provisions of the Declaration of Paris that blockades to be binding must be effective. If there were any force in this contention, it would be completely overcome

by the facts that the hostile supercargo and charterer of this vessel made inquiry, the day before his capture, of the proper local United States officer and was then told by him of the existence of the blockade and of his liability to capture, and that an effective blockade was actually maintained according to the warning. No authority can be found to warrant, under these circumstances, the course adopted by this vessel.

6. (Appellant's brief, p. 31.) It is unnecessary to go farther than the facts clearly proved in the record in this case to demonstrate an intention to break the blockade. This court has very clearly declared that an approach to a blockade, with knowledge of its existence, for the purpose of asking permission to pass, is itself a breach of the blockade. The necessity of this doctrine is well illustrated in this case. A direct warning against approaching the blockade had been given by a proper officer to this charterer and supercargo, as well as to the vessel's captain and agent; the supercargo himself has asserted his own hostile citizenship and sympathies; and the financial outcome of getting through the blockade would have been most lucrative. The suspicion of a purpose to enter, if the blockading vessels had been temporarily absent is not dispelled.

7 and 8. (Appellant's brief, pp. 34, 36.) The position of the United States Consul, and that of the supercargo, are so fully discussed in the preceding portion of this argument, that no further answer is necessary to the assertions of appellant's brief.

9. (Appellant's brief, p. 43.) As to the suggestion that an opportunity should be given to take further proof, it is only necessary to refer to the previous analysis of this testimony as showing that the facts testified to by the captain and supercargo of the vessel, and offered to be established by the local agent of the vessel, with those shown by offi-

cial record, are the facts upon which condemnation was based. No amount of further proof can change the showing already made by this evidence. This court has said on this subject (*The Grey Jacket*, 5 Wall. 368):

"The order is always made with extreme caution, and only where the ends of justice clearly require it."

No good end can be served by protracting the discussion of this case when the facts are all clearly apparent.

10, 11 and 12. (Appellant's brief, 45, 48, 52.) The brief takes considerable space (pp. 45–54) in discussing the previous history and conduct of the vessel. No amount of discussion can destroy the fact of the evident desire of the owners of this vessel to engage in enterprises just as close as possible to the line of illegality, or the manifest impropriety of their placing a vessel, under such conditions, under the control of a subject of one of the belligerent nations. When an individual, inspired by a desire for gain, follows a course of conduct designed to approach as near as possible to a breach of positive law without coming directly within its penalties, it is no cause for deep regret if his avarice is so overstretched that he brings himself within the toils of the law. It is not ordinarily thought that his fate demands the greater commiseration when he tries to secure immunity from deserved punishment by a plea of his devotion to suffering humanity.

GEORGE A. KING,
WILLIAM B. KING,
Of Counsel for Appellees,
on behalf of certain captors.
WILLIAM E. HARVEY,
Of Counsel for Captors
on the "Resolute."